IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23190 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANIL DAYASHANKAR PANDE - Petitioner(s)
Versus
COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :
MR ANIL S DAVE for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MR ND GOHIL AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 13/06/2006

ORAL JUDGMENT

1. By filing this petition, the petitioner-detenu, who is detained under the provisions of Prevention of Anti Social Activities Act (“PASA”

for short), has challenged his detention order dated 27-10-2005, by which he is detained as a “bootlegger” under Section 3 (1) read with Section 2 (b) of PASA. Along with the order of detention, the petitioner-detenu is also served with the grounds of detention. In the grounds of detention, there is a reference of three criminal cases filed against him under the provisions of the Prohibition Act.

2. The detaining authority after arriving at a subjective satisfaction has passed the aforesaid order of detention against the petitioner-detenu. According to the detaining authority, the petitioner-detenu has violated the law and order and public order. It is also stated in the detention order that the activities of the petitioner-detenu are prejudicial to the public health.

3. Learned advocate Ms. Bharti Rana who appeared on behalf of learned advocate Mr. Anil. S. Dave for the petitioner-detenu has vehemently submitted that it cannot be said that the detenu is a bootlegger simply because some criminal cases are registered against him under the Bombay Prohibition Act. It is further submitted that at the most the petitioner can be said to have violated the law and order, but it cannot be said that the petitioner has violated public order and there is no material on record for coming to the conclusion that the activities of the petitioner are prejudicial to public health. She further submitted that only because the petitioner-detenu was alleged to have possessed foreign liquor, it

cannot be said that this activity is prejudicial to public health. She further submitted that it cannot be said that consumption of foreign liquor affects the public health unless there is some material on record in this behalf. It is submitted by her that the authority has not applied its mind properly and came to the conclusion that the activities of the petitioner are prejudicial to public health, even when there is no material on record in this behalf. In order to substantiate her say, Ms. Rana has relied upon the decision of the Supreme Court in **District Collector, Ananthpur and another vs. V. Laxmanna** reported in **2005 AIR SCW 1822**. In the aforesaid case, the Supreme Court has observed as under in paragraph 7 :

> "7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if

> the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation."

4 Ms. Rana has further argued that at the relevant time the petitioner-detenu was already in judicial custody in connection with the pending criminal cases registered against him yet he has been detained under the provisions of PASA. This factual aspect as such is not in dispute. Learned advocate Ms. Rana has placed reliance on a decision rendered by the Apex Court in the case of **T.V.SRAVANAN ALIAS A.R.PRASANA vs. STATE THROUGH SECRETARY AND ANOTHER,** reported in **(2006) 2 Supreme Court Cases 664**, more particularly para 7 wherein the Apex Court has held as under :

> "7. The question is whether on the basis of such material, an order of detention was justified, even though the appellant was in custody on the date of issuance of the order of detention. The principle in this regard is well settled. In *Rameshwar Shaw v. District Magistrate, Burdwan* this Court observed (SCR pp.929-30)
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> "(12) As an abstract proposition of law, there may not be any doubt that Section 3 (1) (a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with

> the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail.... Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case."

5. On the other hand, Mr. N.D.Gohil, learned AGP is not in a position to substantiate his say that the activities of the petitioner-detenu are prejudicial to public health.

6. It is required to be noted that in the detention order it is not mentioned as to how the activity of the petitioner-detenu is prejudicial to public health and it can safely be said that the petitioner-detenu may be guilty of violating law of the land but by selling foreign liquor or by possessing the same, it cannot be said that it is prejudicial to public health unless some credible material is available on record.

7. Considering the aforesaid aspect of the matter and considering the fact that there is nothing to show that the activities of the petitioner-detenu are prejudicial to public health, at the most it can be said that the petitioner-detenu is guilty of violating law and order but it cannot be said that the activities of the petitioner are prejudicial to public health, therefore, the impugned order of detention is required to be quashed and set aside.

8. In view of what is stated hereinabove,the petition is allowed. The order of detention passed against the detenu dated 27-10-2005 is quashed and set aside. The detenu Anil Dayashankar Pande is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

*mithabhai